

**FINDING OF SUITABILITY
TO TRANSFER
(FOST)**

SIERRA ARMY DEPOT

Herlong Parcel

February 2003

FINDING OF SUITABILITY TO TRANSFER
Sierra Army Depot
Herlong Parcel plus Southwest 50 Acres
February 2003

1. PURPOSE

The purpose of this Finding Of Suitability To Transfer (FOST) is to document the environmental suitability of the Herlong Parcel for transfer to the Lassen County Local Reuse Authority (LCLRA), the Fort Sage Unified School District, and the West Patton Village Community Service District consistent with Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 120(h) and Department of Defense/Army policy. The FOST identifies use restrictions as specified in the attached Environmental Protection Provisions necessary to protect human health or the environment after such transfer.

2. PROPERTY DESCRIPTION

The property area consists of the Herlong parcel and the Southwest parcel totaling 550 acres. The Herlong parcel has approximately 500 acres and 20 buildings. It was previously used as three school areas for the Fort Sage Unified School District, recreational areas, administrative, community activities, and two potable water wells, barracks. The Southwest parcel has approximately 50 acres and has not been developed. The property is intended to be transferred for three schools, commercial, office, transient housing, and recreation activities, which is consistent with the intended reuse of the property as set forth in the Lassen County Reuse Plan. A site map of the property is attached (Enclosure 1).

3. ENVIRONMENTAL CONDITION OF THE PROPERTY

A determination of the environmental condition of the facilities has been made based on the **Revised Final Environmental Baseline Survey CERFA Report, Sierra Army Depot Reuse Parcels Lassen County, California – March 2001 (EBS)**. The information provided is a result of a complete search of agency files during the development of these environmental surveys. The following documents also provided information on **environmental** conditions of the property.

- **Revised Final Environmental Baseline Survey CERFA Report, Sierra Army Depot Reuse Parcels Lassen County, California – March 2001**
- **Environmental Assessment for the Disposal and Reuse of the BRAC Parcels at Sierra Army Depot, California – January 1998**
- **Final Supplemental Environmental Assessment of BRAC Excess Property at Sierra Army Depot, California – September 1999**
- **Base Realignment and Closure Cleanup Plan Sierra Army Depot Lassen County, California, Version 2 – April 1997**

- **Draft Final Report Four Preliminary Sites Sierra Army Depot Herlong, Lassen County, California – February 1999**
- **Ordnance and Explosives Archives Search Report Findings for the Honey Lake Range Lassen County, California – September 1996**

3.1 Environmental Condition of Property Categories

The Department of Defense (DOD) Environmental Condition of Property (ECP) Categories for the property is as follows:

ECP Category 1: All the property is Category 1¹.

A summary of the ECP Categories for specific buildings, parcels, or study areas/operable units is provided in Table 1 – The “Description of Property” in Enclosure 2.

Note - The Department of Toxic Substance Control (DTSC) has concurred with the ECP Category 1 determination in a letter dated 27 March 1997.

3.2 Storage, Release, or Disposal of Hazardous Substances

3.2.1 Hazardous Substance Storage

There is no evidence that hazardous substances were stored, released, or disposed on the Property in excess of the reportable quantities listed in 40 CFR Part 373. Accordingly, there is no need for any notification of hazardous substance storage, release, or disposal.

3.2.2 Investigation/Remediation Sites

There are no investigation/remediation sites located on the property. In addition, there is no evidence of contaminated soil or groundwater on the property.

3.3 Petroleum and Petroleum Products

¹ The EBS, March 2001, Plate 7, identified the following parcels/sites as ECP Category 2, various transformers and above ground/below ground storage tanks; ECP Category 3, tanks RSO-UST2, RSO-UST3, UST2, UST5, UST6, and UST13; ECP Category , Former AST-A, AST-B, 1203-AST, and UST68. Upon subsequent review, all these items have been re-categorized as ECP Category 1, as there has not been any release of petroleum products or hazardous substances.

3.3.1 Underground and Above-Ground Storage Tanks (UST/AST)

- **Current UST/AST Sites** - There are ten (10) Army owned above-ground storage tanks (AST) and (2) school owned ASTs on the property that are currently used for storage of petroleum products. There are no current underground storage tanks (UST) in use. No known petroleum product releases have occurred at the existing AST sites.
- **Former UST/AST Sites** - There were eleven (11) Army owned and four (4) school owned USTs formerly on the property that were used for storage of petroleum products which have been removed or closed in place. No petroleum product releases in excess of 55 gallons occurred at the former UST/AST sites.

See Table 2 - Notification of Petroleum Products Storage, Release, or Disposal for additional information (Enclosure 3).

3.3.2 Non-UST/AST Storage, Release, or Disposal of Petroleum Products

There is no evidence that non-UST/AST petroleum or petroleum products in excess of 55 gallons at one time were stored, released, or disposed of on the property as the result of non-UST/AST petroleum activities. Accordingly, there is no need for any notification of non-UST/AST petroleum product storage, release, or disposal.

3.3.3 Non-UST/AST Storage, Release, or Disposal of Petroleum Products Areas with Releases Less Than 55 Gallons at One Time

An over flow condition existed at a blocked oil water separator behind Bldg. 1003. The condition resulted in random period small releases (less than 55 gallons) of petroleum products into the overflow secondary containment area that drained to Army retained property North of Susanville Road. The Bldg. 1003 oil water separator was characterized as ECP 1 because there is no evidence of a release from the secondary containment area to the FOST property.

3.4 Polychlorinated Biphenyls (PCB) Equipment

The following PCB containing equipment is located on the property:

Location	Serial Number	KVA	PCB Results
Bldg. 1010	7093567	25	205 ppm
NE Bldg. T-1217	60S4877	75	5 ppm
NE Bldg. T-1217	61S8681	75	5 ppm
Athletic Field	7093563	25	212 ppm

This equipment is operational, properly labeled in accordance with federal and state regulations, and has been determined not to be leaking.

3.5 Asbestos

There is asbestos containing material in the following buildings: 170, 1010, 1202, 1203, 1204, 1217, 1223, 2067, and 2071. The ACM includes: Floor tile, insulation, plaster-like insulation, corrugated pipe insulation, transite shingles, pink shingle, black felt gasket, plaster-like pipe lagging, corrugated cardboard duct wrap, grey air duct panels (paper-like), wallboard, and drywall. The ACM does not currently pose a threat to human health or the environment because all friable asbestos that posed an unacceptable risk to human health has been removed or encapsulated (except for the crawlway in Building 2067). Building 2067 has friable asbestos in a crawl space with the entrance secured and warning signs posted. The deed will include the asbestos warning and covenant included in the Environmental Protection Provisions (Enclosure 4).

3.6 Lead-Based Paint (LBP)

Based on the age of the buildings (constructed prior to 1978), the following buildings are presumed to contain lead-based paint: 108, 109, 165, 166, 167, 168, 170, 141, 1003, 1202, 1203, 1204, 1202A, 1217, 1223, 2067, 2071, 2072. The property was not used for residential purposes. The transferee does not intend to use the property for residential purposes. However, the transferee does intend the following types of reuse that warrant special attention:

- Daycare center - Building 172 was used as an Army daycare center. The community redevelopment plan intended use is as a future daycare center. Building 172 was determined not to contain lead-based paint based on its construction date of 1987.
- Military barracks/Transient Housing - Buildings 166, 167, 168, 1202, 1203, and 1204 were used as military barracks. The transferee may use these buildings for military barracks and temporary lodging for construction personnel in the future. Military barracks are considered “zero-bedroom dwellings” and are not residential property under Title X, the Residential Lead-Based Paint Hazard Reduction Act.

The deed will include the lead-based paint warning and covenant providing that the buildings will not be used to house children under six (6) as provided in the Environmental Protection Provisions (Enclosure 4).

3.7 Radiological Materials

There is no evidence that the radioactive material or sources were used or stored on the property.

3.8 Radon

Radon surveys were conducted in the Herlong parcel buildings and radon was not detected at above the EPA residential action level of 4 picocuries per liter (pCi/L) in these buildings.

3.9 Unexploded Ordnance

Sierra Army Depot has conducted storage and open burning and open detonation (OB/OD) of munitions since 1945. The Herlong parcel has never been used for ammunition storage or OB/OD operations. The EBS and depot records show no ordnance or unexploded ordnance (UXO) was located on the Herlong parcel or subject 50-acre area.

4. ADJACENT PROPERTY CONDITIONS

There are the following types of activities adjacent to the property:

- Ammunition Storage - There are 699 igloos used for the storage of conventional ammunitions and explosives. The storage areas are more than a mile and a third from the Herlong parcel. The munition storage area is fenced with guarded entrances.
- OB/OD operations - The SIAD OB/OD operations are located approximately eight miles from the Herlong parcel. These operations are strictly regulated and conducted in accordance with all applicable federal, state, and local regulations.
- An active landfill is approximately ½ mile northeast of the 50-acre parcel. No known contaminants have migrated from the landfill area. The landfill perimeter has an active monitoring well network.

Based on the lack of proximity of these activities to the Herlong parcel and subject 50-acre parcel and the strict procedures and regulations governing the storage and OB/OD of munitions, and the monitoring associated with landfill activities do not make the property unsuitable to transfer.

5. ENVIRONMENTAL REMEDIATION AGREEMENTS

The following environmental remediation orders/agreements are applicable to the SIAD: the Federal Facility Site Remediation Agreement (FFSRA) dated 30 May 1991. There are no FFSRA study areas/operable units or contaminated groundwater on the property. The deed will include a provision reserving the Army's right to conduct response action or corrective action if found to be necessary in the future (See Enclosure 4).

6. REGULATORY/PUBLIC COORDINATION

The U.S. EPA Region IX, the DTSC were notified of the initiation of the FOST. The document in draft form was forwarded to regulators and the public for review and comments. Regulatory/public comments were reviewed and incorporated as appropriate. A copy of the regulatory/public comments and the Army Response is provided at Enclosures 5 and 6.

7. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE

The environmental impacts associated with proposed transfer of the property have been analyzed in accordance with the National Environmental Policy Act (NEPA). The results of this analysis have been documented in the **Environmental Assessment for the Disposal and Reuse of the BRAC Parcels at Sierra Army Depot, California – January 1998**. Any encumbrances or condition identified in such analysis as necessary to protect human health or the environment have been incorporated into the FOST.

8. FINDINGS OF SUITABILITY TO TRANSFER

Based on the information above, I conclude that the Property qualifies as CERCLA §120(h)(4) uncontaminated property and is transferable under that section. In addition, all Department of Defense requirements to reach a finding of suitability to transfer have been met subject to the terms and conditions set forth in the attached Environmental Protection Provisions which shall be included in the deed for the property. The Environmental Protection Provisions also include the CERCLA 120(h)(4) covenant and access provisions. Whereas no hazardous substances or petroleum products are known to have been released or disposed of on Property, the hazardous substance or petroleum notification need not and will not be provided with the deed.

JAMES R. DAVIDSON
Director
National Capital Region Field Office
U.S. Army Installation Support
Management Agency

- Encl. 1 Site Map
- Encl. 2 Table 1 Description of Property
- Encl. 3 Table 2 Notification of Petroleum Product Storage, Release, or Disposal
- Encl. 4 Environmental Protection Deed Provisions
- Encl. 5 Regulatory/Public Comments
- Encl. 6 Army Response to Regulatory/Public Comments (if applicable)

ENCLOSURE 1

SITE MAP

ENCLOSURE 2

Table 1 – Description of Property

Building Number and Property Description	EBS Parcel Designation	Condition Category	Remedial Actions
REMAINING HERLONG PARCEL			
Bldg. 89 Well 5 Pump House	Bldg.	1	None
Bldg. 108 Announcers booth	Bldg. 108	1	None
Bldg. 109 Announcers booth	Bldg. 109	1	None
Bldg. 170 X-chapel / admin	Bldg. 170	1	None
Bldg. 172 Child Care	Bldg. 172	1	None
Bldg. 141 Water Well #9 (potable)	Bldg. 141	1	None
Bldg. 1003 C-Mart	Bldg. 1003	1	None
Bldg. 1003 C-Mart Oil Water Separator	Bldg. 1003	1	None Required
Bldg. 1202 Enlisted Barracks	Bldg. 1202	1	None
Bldg. 1203 Enlisted Barracks	Bldg. 1203	1	None
Bldg. 1204 Enlisted Barracks	Bldg. 1204	1	None
Bldg. 1202A Recreation Bldg.	Bldg. 1202A	1	None
Bldg. 1217 Storage/Dining	Bldg. 1217	1	None
Bldg. 1223 Admin Bldg.	Bldg. 1223	1	None
Bldg. 2067 Multipurpose	Bldg. 2067	1	None
Bldg. 2071 Theater	Bldg. 2071	1	None
Bldg. 2072 Transmitter Bldg.	Bldg. 2072	1	None
Structure P-2073 Antenna Tower	P-2072	1	None
Structure P-2076 Softball Field	P-2076 Est. 4 acres	1	None

Building Number and Property Description	EBS Parcel Designation	Condition Category	Remedial Actions
Structure P-2077 Baseball Field	P-2077 Est. 11 acres	1	None
Structure P-2084 Tennis Courts	P-2084 Est. 1 acres	1	None
Structure P-2085 Softball Field	P-2085 Est. 4 acres	1	None
Land around and under High School (HS)	HS Land Est. 40 acres	1	None
Land around and under Middle & Primary (M&S)	M&S School Est. 25 acres	1	None
Teacher Residence Render School Land (T&R)	T&R Land Est. 25 acres	1	None
X Flagler Court & West Land	Flagler West Est. 70 acres	1	None
South Vacant Land & Remaining Acres	S. Vacant Land Est. 130 acres	1	None
Bldg. 165 Mess Cafeteria	Bldg. 165	1	None
Bldg. 166 Barracks	Bldg. 166	1	None
Bldg. 167 Barracks	Bldg. 167	1	None
Bldg. 168 Barracks	Bldg. 168	1	None

Category 1: Areas where no release or disposal of hazardous substances or petroleum products has occurred. (including no migration of these substances from adjacent areas)

Category 2: Areas where only release or disposal of petroleum products has occurred.

Category 3: Areas where release, disposal, and/or migration of hazardous substances has occurred, but at concentrations that do not require a removal or remedial response.

Category 4: Areas where release, disposal, and/or migration of hazardous substances has occurred, and all removal or remedial actions to protect human health and the environment have been taken.

Category 5: Areas where release, disposal, and/or migration of hazardous substances has occurred, and removal or remedial actions are underway, but all required remedial actions have not yet been taken.

Category 6: Areas where release, disposal, and/or migration of hazardous substances has occurred, but required actions have not yet been implemented.

Category 7: Areas that are not evaluated or require additional evaluation.

ENCLOSURE 3

Table 2 - Notification of Petroleum Product Storage, Release, and Disposal

Army Above Ground Storage Tanks –

Tank Number	Building Number	Location	Release > 55 Gallons	Capacity Gallons	Stored Material	Year Installed	Secondary Containment Type
26	170	x-chapel	No	2000	Diesel	1997	DW
47	1003	C-Mart	No	8000	Diesel	1996	DW
48	1003	C-Mart	No	8000	Unleaded	1996	DW
49	1003	C-Mart	No	8000	Unleaded	1996	DW
29	T-1010	Laundry*	No	520	Diesel		DW
51	1203	Old Barracks	No	275	Diesel	1994	CDM
52	1217	Old Chow Hall	No	2000	Diesel	1997	DW
53	1223	MILPO	No	520	Diesel	1994	CD
54	2071	Theater	No	3000	Diesel	1997	DW
56	2071	Theater	No	1000	Diesel	1997	DW
*Demolished DW = Double Walled Containment, CD = Containment Dike – Concrete, CDM = Containment Dike – Metal							

School Owned Above Ground Storage Tanks (ASTs)

Building	AST Number-Type	Contents	Release > 55 (gallon)	Size (gallons)	Year Installed	Date Removed
Primary School	A-AST	Gasoline	No	200	UNK	In use
Primary School	B-AST	Diesel Gasoline	No	1500	UNK	In use

The data for the following information was collected from school records, Sierra Army Depot records and a Sierra Army Depot field sampling effort for petroleum releases conducted in August 1996.

Former Army Underground Storage (UST) and Above Ground (AST) Tanks –

Tank Number	Building Number	Location	Release > 55 Gallons	Capacity Gallons	Stored Material	Type Tank	Year Installed	Status or Date Removed
112	170	x-chapel	No	2,000	Diesel	UST	UNK	1996
5	T-1010	Laundry*	No	550	Diesel	UST	UNK	1994
37	1019	Removed Bowling Alley*	No	2,000	Diesel	UST	UNK	1991
11	1203	Barracks	No	1,000	Diesel	UST	1974	1993
13	T-1217	Old Club Mess	No	9,000	Diesel	UST	UNK	1996
6	T-1223	VFW	No	500	Diesel	UST	UNK	1994
12	1214		No	1,000	Diesel	UST	UNK	1991
72	2069	Business and Admin Center	No	10,000	Diesel	UST	UNK	1996
7	2067	Community Admin Center	No	6000	Diesel	UST	UNK	1996
8	2067	Community Admin Center	No	12,000	Diesel	UST	UNK	1996
68	2067	Community Admin Center	No	2,500	Diesel	UST	UNK	1996
Temporary	1203	Barracks	No	250	Diesel	AST	UNK	UNK

*Demolished

- The above tanks were all addressed under the Sierra Army Depot tank compliance program

Former School Underground Storage (UST) and Above Ground (AST) Tanks –

Tank Number	Location	Capacity Gallons	Release > 55 Gallons	Stored Material	Type Tank	Year Installed	Status or Date Removed
ASO-UST 1	High School	Unknown	No	Diesel	UST	UNK	Abandoned In Place
ASO-UST 2	Primary School	Unknown	No	Diesel	UST	UNK	Abandoned In Place
ASO-UST 3	Primary School	Unknown	No	Diesel	UST	UNL	Abandoned In Place
RSO-UST1	High school	UNK	No	Diesel	UST	UNK	UNK
RSO-UST2	High school	UNK	No	Diesel	UST	UNK	UNK
RSO-UST3	High school	UNK	No	Diesel	UST	UNK	UNK
RSO-UST4	Teachers' Quarters	UNK	No	Diesel	UST	UNK	UNK

• An investigation for spills related to the school tanks was conducted in August 1996: No spills were identified above local County action levels.
 • * All School-Owned USTs are Inactive (abandoned in place or removed)

ENCLOSURE 4

ENVIRONMENTAL PROTECTION PROVISIONS

1. CERCLA COVENANTS AND NOTICE

A. CERCLA Covenant

Pursuant to Section 120 (h) (4) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. Section 9601 et seq. ("CERCLA"), the Grantor has identified the Herlong Parcel and Southwest Parcel (the Property) as real property on which no hazardous substances and no petroleum products or their derivatives were known to have been released or disposed of. The Grantor covenants and warrants to the Grantee, its successors and assigns, that in the event any response action or corrective action is found to be necessary after the date of this conveyance as a result of hazardous substances or petroleum products contamination existing on the Property prior to the date of this conveyance, such response action or corrective action shall be conducted by the Grantor. This covenant shall not apply in any case in which a person or entity to whom all or a portion of the Property is transferred is a potentially responsible party with respect to the Property.

B. Access Rights and Easement

The Grantor reserves a right and easement for access to the Property in any case in which response action or corrective action is found to be necessary on the Property or on adjoining property after the date of this Deed. In exercising these rights of access, except in case of imminent endangerment to human health or the environment, the Grantor shall give the Grantee, or the then record owner, at least thirty (30) days prior written notice of actions to be taken in remediation of the Property, and shall use reasonable means, without significant additional cost to the Grantor, to avoid and/or minimize interference with the use of the Property by the Grantee, its successors and assigns. Furthermore, any such actions undertaken by the Grantor pursuant to this Section will, to the maximum extent practicable, be coordinated with a representative of the Grantee, its successors and assigns. The Grantee shall not through construction or operation/maintenance activities, interfere with any remediation or response action conducted by the Grantor under this paragraph. Grantee agrees that, notwithstanding any other provisions of the Deed, that the Grantor assumes no liability to the Grantee, its successors and assigns, or any other person, should remediation of the Property interfere with the use of the Property by the Grantee, its successors and assigns.

C. Transfer Documents

The Grantee and its successors and assigns covenant and agree that all leases, transfers or conveyances of the Property occurring subsequent to the date of this Deed shall be made subject to, and shall have the benefit of, the provisions contained in this Article ____.

2. FEDERAL FACILITY SITE REMEDIATION AGREEMENT (FFSRA)

The GRANTOR acknowledges that Sierra Army Depot and the State of California have entered into a Federal Facility Site Remediation Agreement (FFSRA) governing the remediation of the installation. The GRANTEE acknowledges that the GRANTOR has provided it with a copy of the FFSRA dated 30 May 1991 and will provide the GRANTEE with a copy of any amendments thereto. The GRANTEE, its successors and assigns, agrees that should any conflict arise between the terms of the FFSRA as they presently exist or may be amended, and the provisions of this property transfer, the terms of the FFSRA will take precedence. The Grantee, its successors and assigns, further agree that notwithstanding any other provisions of this Deed, the Grantor assumes no liability to the Grantee, its successors and assigns, should implementation of the FFSRA interfere with the their use of the Property. The Grantee, its successors and assigns, shall have no claim on account of any such interference against the Grantor or any officer, agent, employee or contractor thereof. The Grantor shall, however, comply with the provisions of Section [1B] above in the exercise of its rights under the FFSRA.

3. ENVIRONMENTAL BASELINE SURVEY (“EBS”) AND FINDING OF SUITABILITY TO TRANSFER (“FOST”)

A. The Grantee has received the technical environmental reports, including the Environmental Baseline Survey for the Property dated March 1997, as revised on March 2001 (collectively the “EBS”) and the FOST for the property dated _____, prepared by the Grantor, and agrees, to the best of the Grantee’s knowledge, that they accurately describe the environmental condition of the Property. The Grantee has inspected the Property and accepts the physical condition and current level of environmental hazards on the Property and deems the Property to be safe for the Grantee’s intended use.

B. If an actual or threatened release of a hazardous substance or petroleum product is discovered on the Property after the date of the conveyance, whether or not such substance was set forth in the technical environmental reports, including the EBS, Grantee or its successors or assigns shall be responsible for such release or newly discovered substance unless Grantee is able to demonstrate that such release or such newly discovered substance was due to Grantor’s activities, ownership, use, or occupation of the Property. Grantee, its successors and assigns, as consideration for the conveyance, agree to release Grantor from any liability or responsibility for any claims arising solely out of the release of any hazardous substance or petroleum product on the Property occurring after the date of this Deed, where such substance or product was placed on the Property by the Grantee, or its successors, assigns, employees, invitees, agents or contractors, after the conveyance. This Article ____ shall not affect the Grantor’s responsibilities to conduct response actions or corrective actions that are required by applicable laws, rules and regulations, or the Grantor’s indemnification obligations under applicable laws.

4. NOTICE OF THE PRESENCE OF LEAD BASED PAINT AND COVENANT AGAINST THE USE OF THE PROPERTY FOR RESIDENTIAL PURPOSES

A. The Grantee is hereby informed and does acknowledge that all buildings on the Property, which were constructed or rehabilitated prior to 1978, are presumed to contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Every purchaser of any interest in Residential Real Property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. "Residential Real Property" means any housing constructed prior to 1978, except housing for the elderly (households reserved for and composed of one or more persons 62 years of age or more at the time of initial occupancy) or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling. For the purpose of this Deed, child-occupied facilities are included in the definition of "residential Real Property" and means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, less than 6 years of age, on at least two different days within any week (Sunday through Saturday), provided that each day's visit lasts at least 3 hours, that the combined weekly visits last at least 6 hours, and that the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day-care centers, pre-schools, and kindergarten classrooms."

B. Available information concerning known lead-based paint and/or lead-based paint hazards, the location of lead-based paint and/or lead-based paint hazards, and the condition of painted surfaces is contained in the Environmental Baseline Survey and (for residential properties) the lead-based paint risk assessment, which have been provided to the Grantee. All purchasers must receive the federally-approved pamphlet on lead poisoning prevention. The Grantee hereby acknowledges receipt of all of the information described in this subparagraph.

C. The Grantee acknowledges that it has received the opportunity to conduct its own risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards prior to execution of this document.

D. The Grantee covenants and agrees that it shall not permit the occupancy or use of any buildings or structures on the Property as Residential Real Property without complying with this section and all applicable federal, state, and local laws and regulations pertaining to lead-based paint and/or lead-based paint hazards. Prior to permitting the occupancy of the Property where its use subsequent to sale is intended for residential habitation, the Grantee specifically agrees to perform, at its sole expense, the

Army's abatement requirements under Title X of the Housing and Community Development Act of 1992 (Residential Lead-Based Paint Hazard Reduction Act of 1992) (hereinafter Title X).

The Grantee shall, after consideration of the guidelines and regulations established pursuant to Title X: (1) Comply with the joint HUD and EPA Disclosure Rule (24 CFR 35, Subpart H, 40 CFR 745, Subpart F), when applicable, by disclosing to prospective purchasers the known presence of lead-based paint and/or lead-based paint hazards as determined by previous risk assessments; (2) Abate lead-based paint hazards in pre-1978 buildings and structures in paint, dust and bare soil in accordance with the HUD Guidelines; and (3) Comply with the EPA lead-based paint work standards when conducting lead-based paint activities (40 CFR 745, Subpart L).

In complying with these requirements, the Grantee covenants and agrees to be responsible for any abatement or remediation of lead-based paint or lead-based paint hazards on the Property found to be necessary as a result of the subsequent use of the property for residential purposes. The Grantee covenants and agrees to comply with solid or hazardous waste laws that may apply to any waste that may be generated during the course of lead-based paint abatement activities.

E. The Grantee further agrees to indemnify and hold harmless the Army, its officers, agents and employees, from and against all suits, claims, demands, or actions, liabilities, judgments, costs and attorney's fees arising out of, or in a manner predicated upon personal injury, death or property damage resulting from, related to, caused by or arising out of lead-based paint or lead-based paint hazards on the Property if used for residential purposes.

F. The covenants, restrictions, and requirements of this Section ___ shall be binding upon the Grantee, its successors and assigns and all future owners and shall be deemed to run with the land. The Grantee on behalf of itself, its successors and assigns covenants that it will include and make legally binding, this Section ___ in all subsequent transfers, leases, or conveyance documents."

5. NOTICE OF THE PRESENCE OF ASBESTOS AND COVENANT

A. The Grantee is hereby informed and does acknowledge that friable and non-friable asbestos or asbestos-containing materials ("ACM") has been found in buildings and structures on the Property, as described in the EBS. The ACM in buildings and structures on the Property does not currently pose a threat to human health or the environment, and all friable asbestos that posed a risk to human health has either been removed, encapsulated except for the Building 2067 crawlway. The Building 2067 crawlway has friable asbestos. The crawlway entrance is secured and warning signs have been posted.

B. The Grantee covenants and agrees that its use and occupancy of the Property will be in compliance with all applicable laws relating to asbestos; and that the Grantor assumes no liability for future remediation of asbestos or damages for personal injury, illness, disability, or death, to the Grantee, its successors or assigns, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Property, whether the Grantee, its successors or assigns, have properly warned or failed to properly warn the individual(s) injured. The Grantee agrees to be responsible for any future remediation of asbestos in buildings and structures found to be necessary on the Property.

C. Unprotected or unregulated exposures to asbestos in product manufacturing, shipyard, and building construction workplaces have been associated with asbestos-related diseases. Both the Occupational Safety and Health Administration (OSHA) and EPA regulate asbestos because of the potential hazards associated with exposure to airborne asbestos fibers. Both OSHA and EPA have determined that such exposure increases the risk of asbestos-related diseases, which include certain cancers and which can result in disability or death.

D. The Grantee acknowledges that it has inspected the Property as to its asbestos content and condition and any hazardous or environmental conditions relating thereto. The Grantee shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Property, including, without limitation, any asbestos hazards or concerns.

E. The Grantor assumes no liability for any damages to person or property, and gives no warranties, either express or implied, with regard to the presence or absence of asbestos or ACM in buildings and structures, or whether the Property is or is not suitable for a particular purpose. The Grantee further agrees to indemnify and hold harmless the Grantor, its officers, agents and employees from and against all suits, claims, demands or actions, liabilities, judgments, penalties, costs and attorneys' fees arising out of, or in any manner predicated upon, future asbestos abatement or remediation from within buildings and structures on the Property; disposal of ACM or asbestos after conveyance to the Grantee; personal injury, death or property damages resulting from, related to, caused by or arising out of exposure to asbestos within buildings or structures on the Property after the conveyance of such portion of the Property to the Grantee. The Grantee's obligation hereunder shall apply whatever the United States incurs costs or liabilities for actions giving rise to liability under this Section. The Grantee shall not be responsible for indemnifying or holding the Grantor harmless from any loss, claims, liabilities, judgments, penalties, costs, or damages arising out of exposure to asbestos that occurred prior to the date of this Deed.

6. STATUTORY INDEMNIFICATION

The Grantor recognizes its obligation to hold harmless, defend, and indemnify the Grantee and any successor, assignee, transferee, lender, or lessee of the Grantee or its successors and assigns, as required and limited by Section 330 of the Department of Defense Authorization Act of 1993, as amended, and to other wise meet its obligations under law.

7. INCLUSION OF PROVISIONS

The GRANTEE, its successors and assigns, shall neither transfer the Property, lease the Property, nor grant any interest, privilege, or license whatsoever in connection with the Property without the inclusion of the environmental protection provisions contained herein, and shall require the inclusion of such environmental protection provisions in all further deeds, transfers, leases, or grants of any interest, privilege, or license.

ENCLOSURE 5

REGULATORY/PUBLIC COMMENTS

EPA REGION IX HERLONG PARCEL COMMENTS – OCT 2001

Herlong Parcel

1. Section 2. Reference to 50 acre piece of Prison property is very unclear. If this has been transferred, how will be conveyed to someone else? Clarify reference to "All" in the last sentence. The USEPA suggests combining the two sentences with the last becoming a clause beginning with "which".
2. Section 3.6. Clarify the sentence beginning "The deed will include.." by eliminating the phrase "to include in the covenant the" and replace it with "providing that" .
3. Section 6. The last sentence needs to be revised to reflect that comments have been received and incorporated or attached as unresolved.
4. Section 8. Eliminate first sentence as it relates to leases. Describe the covenants required by Section 120(h)(4) for all ECP 1 areas.
5. Enclosure 4. Substitute reference to 120(h)(4) for (h)(3); Eliminate reference to Notice under (h)(1); and substitute covenants provided under (h)(4) for existing (h)(3) covenants.
6. Section 3B. This provision shifts the burden of establishing that a release is the responsibility of the Army to the Transferee. Such a provision is inconsistent with the statutory mandate for the Army to conduct any further response or corrective action found to be necessary after the date of transfer and may also be inconsistent with the Army's obligation to indemnify the transferee or subsequent parties suffering injury as the result of hazardous substances or petroleum products associated with the Army's use of the property.
7. Section 4D. This section should be modified to provide that the standards to be met prior to residential use are the standards established under Title X, even though the property in question is not "target housing" to which those standards are directly applicable.

**ADDITIONAL STATE OF CALIFORNIA HERLONG PARCEL FOST
COMMENTS – FAX - December 11, 2001**

1. Comment: Section 3, pg. 2, Documents list. This list includes the “Draft Engineering Evaluation/Cost Analysis Former Honey Lake Demolition Range Sierra Army Depot, Lassen County, California – July 200(sic)”. This document was issued as an Internal Working Draft. Extensive comments provided by DTSC have not been reviewed or commented upon due to delays in conducting the scope of work proposed in the document. Reference to this document should be deleted.
2. Comment: Section 3.1, pg. 2: CERCLA Section 120 (h) (4) (B) requires the State’s concurrence in the results of the identification described in CERCLA Section 120 (h) (4) (A) of property where no hazardous substances or petroleum products were known to have been released, or disposed of, including no migration of these substances to adjacent areas (DOD Environmental Condition of Property Category 1). Accordingly, the FOST should reference DTSC’s regulatory concurrence letter of March 27, 1997 for specified Herlong acreage.
3. Comment: Section 3.6, pg. 4 bullet item #1: from the wording of this item it is unclear as to whether or not Building 172 will be used as a daycare center.
4. Comment: Section 3.6, pg. 4: In the deed (Enclosure 4), please use wording from Fort Ord’s FOSL for the For a Expansion, as follows; “residential or Child Occupied use of the buildings is prohibited unless all Lead Based Paint hazards have been abated.”
5. Comment: Section 6, pg. 5 Regulatory/Public Coordination: DTSC is unaware of any request by the Army for public comment on this document. Forwarding the document to Lassen County officials negotiating for these properties does not constitute ‘public comment’.
6. Comment: Enclosure 1, Site Map: A larger scale map, showing in greater detail those properties that are proposed for transfer under this document should be provided.
7. Comment: Enclosure 3, Table 2, School Owned and Operational Underground Storage Tanks (USTs) and Above ground Storage Tanks (ASTs): The footnote of this Table states, “All School-Owned USTs are Inactive (abandoned in place or removed)”. However, the Date Removed column indicated the tanks are still “In Use”. Please provide the current status of these tanks, and rectify the discrepancy as presented in this table.
8. Comment: Enclosure 4, Section 5, Notice of the Presence of Asbestos and Covenant, Paragraph A: The last portion of this paragraph states that, “...all friable asbestos that posed a risk to human health has either been removed or encapsulated.” This statement is not accurate. Friable asbestos still exist in the crawlway under Building 2067. The access is secured and appropriate warning signs are in place. Modify this sentence to reflect the actual conditions present.

ENCLOSURE 6

ARMY RESPONSE TO REGULATORY/PUBLIC COMMENTS

**ARMY RESPONSE TO EPA REGION IX HERLONG PARCEL COMMENTS –
FAX - DATED OCTOBER 2001**

COMMENT 1: Section 2. Reference to 50-acre piece of Prison property is very unclear. If this has been transferred how will be conveyed to someone else? Clarify reference to "All" in the last sentence. The USEPA suggests combining the two sentences with the last becoming a clause beginning with "which".

ARMY RESPONSE: This section was revised to delete the reference to the previous Bureau of Prisons transfer. The last two sentences have been modified as recommended

COMMENT 2: Section 3.6. Clarify the sentence beginning "The deed will include." by eliminating the phrase "to include in the covenant the" and replace it with "providing that".

ARMY RESPONSE: Recommendation accepted and the sentence was modified to recommendation.

COMMENT 3 : Section 6. The last sentence needs to be revised to reflect that comments have been received and incorporated or attached as unresolved.

ARMY RESPONSE: This Section has been revised to include the Regulator comments and Army Response as part of the FOST.

COMMENT 4: Section 8. Eliminate first sentence as it relates to leases. Describe the covenants required by Section 120(h)(4) for all ECP 1 areas.

ARMY RESPONSE: This Section was revised to reference the CERCLA 120(h)(4) covenant.

COMMENT 5: Enclosure 4. Substitute reference to 120(h)(4) for (h)(3); Eliminate reference to Notice under (h)(1); and substitute covenants provided under (h)(4) for existing (h)(3) covenants.

ARMY RESPONSE: The deed provisions were revised to include the CERCLA 120(h)(4) covenant.

COMMENT 6: Section 3B. This provision shifts the burden of establishing that a release is the responsibility of the Army to the Transferee. Such a provision is inconsistent with the statutory mandate for the Army to conduct any further response or corrective action found to be necessary after the date of transfer and may also be inconsistent with the Army's obligation to indemnify the transferee or subsequent parties suffering injury as the result of hazardous substances or petroleum products associated with the Army's use of the property.

ARMY RESPONSE: Disagree. This is standard deed language that has been approved by the Army Office of General Counsel for property transfers at other BRAC installations. The Army believes the language as presented is consistent with the requirements relative to future identified spills or future spills on the subject property for the Army obligations as the Grantor and transferor of property to a Grantee and does not reduce the Grantor's indemnification requirements per applicable laws.

COMMENT 7: Section 4D. This section should be modified to provide that the standards to be met prior to residential use are the standards established under Title X, even though the property in question is not "target housing" to which those standards are directly applicable.

ARMY RESPONSE: Disagree. It is the Army position that the Title X requirements only apply to "target housing". There is no basis for the Army to impose the Title X requirement on non-residential property. However, if the property is used for residential habitation the deed provisions require the grantee to meet the Title X requirements.

**ARMY RESPONSE TO ADDITIONAL STATE OF CALIFORNIA HERLONG
PARCEL COMMENTS DATED 11 DEC 2001**

COMMENT 1: Section 3, pg. 2, Documents list. This list includes the “Draft Engineering Evaluation/Cost Analysis Former Honey Lake Demolition Range Sierra Army Depot, Lassen County, California – July 200(sic)”. This document was issued as an Internal Working Draft. Extensive comments provided by DTSC have not been reviewed or commented upon due to delays in conducting the scope of work proposed in the document. Reference to this document should be deleted.

ARMY RESPONSE: Sierra Army Depot concurs and under its own review identified the document as an internal draft. The document has been removed from the document list.

COMMENT 2: Section 3.1, pg. 2: CERCLA Section 120 (h) (4) (B) requires the State’s concurrence in the results of the identification described in CERCLA Section 120 (h) (4) (A) of property where no hazardous substances or petroleum products were known to have been released, or disposed of, including no migration of these substances to adjacent areas (DOD Environmental Condition of Property Category 1). Accordingly, the FOST should reference DTSC’s regulatory concurrence letter of March 27, 1997 for specified Herlong acreage.

ARMY RESPONSE: The FOST was revised to reference the DTSC concurrence letter.

COMMENT 3: Section 3.6, pg. 4 bullet item #1: from the wording of this item it is unclear as to whether or not Building 172 will be used as a daycare center.

ARMY RESPONSE: Edited to reflect the Community Proposed Reuse Plan.

COMMENT 4: Section 3.6, pg. 4: In the deed (Enclosure 4), please use wording from Fort Ord’s FOSL for the For a Expansion, as follows; “residential or Child Occupied use of the buildings is prohibited unless all Lead Based Paint hazards have been abated.”

ARMY RESPONSE: Sierra Army Depot transfers these buildings as is and it is the new owner’s obligation to be in compliance with HUD LBP requirements. The Deed provisions identify to the Grantee the HUD LBP requirements.

COMMENT 5: Section 6, pg. 5 Regulatory/Public Coordination: DTSC is unaware of any request by the Army for public comment on this document. Forwarding the document to Lassen County officials negotiating for these properties does not constitute ‘public comment’.

ARMY RESPONSE: The Lassen County Reuse Authority and the public will be provided the Draft FOST for review and comments. The Army will provide public notice of FOSTs/FOSLs in the local newspaper as well as providing a copy to the Lassen County Local Reuse Authority.

COMMENT 6: Enclosure 1, Site Map: A larger scale map, showing in greater detail those properties that are proposed for transfer under this document should be provided.

ARMY RESPONSE: A larger scale map is under development. The map will be included with the final publication.

COMMENT 7: Enclosure 3, Table 2, School Owned and Operational Underground Storage Tanks (USTs) and Above ground Storage Tanks (ASTs): The footnote of this Table states, "All School-Owned USTs are Inactive (abandoned in place or removed)". However, the Date Removed column indicated the tanks are still "In Use". Please provide the current status of these tanks, and rectify the discrepancy as presented in this table.

ARMY RESPONSE: Corrected: The School UST table was corrected to include the ASTs in use and "abandoned in place or removed reference".

COMMENT 8: Enclosure 4, Section 5, Notice of the Presence of Asbestos and Covenant, Paragraph A: The last portion of this paragraph states that, "...all friable asbestos that posed a risk to human health has either been removed or encapsulated." This statement is not accurate. Friable asbestos still exists in the crawlway under Building 2067. The access is secured and appropriate warning signs are in place. Modify this sentence to reflect the actual conditions present.

ARMY RESPONSE: The Asbestos deed provision was revised to provide notice of the friable asbestos in the crawlway under Building 2067.

**ARMY RESPONSE TO EPA REGION IX HERLONG PARCEL COMMENTS
DATED DECEMBER 23, 2002**

GENERAL COMMENT: The text requires a minor modification at page 2 where it is stated that “nearly all the property is ECP 1”. If some portion of the parcel is not ECP 1 that portion needs to be identified and appropriate language needs to be added to support its suitability for transfer, e.g. ECP 2 / no action required or all required action taken. Unless the choice is ECP 2, an (h) (3) covenant would also be required.

ARMY RESPONSE: This section has been clarified to identify the correct categories.

**THE FOLLOWING SPECIFIC COMMENTS REFLECT PRIOR EPA
COMMENTS AND ARMY’S RESPONSES**

PRIOR EPA COMMENT: (Enclosure 4, Section 1A) Substitute (h)(3) covenant for(h)(4) covenant. The Army has made the change, however, the sentence following 120(h)(4) covenant should be eliminated. The statutory exception for persons who are PRPs does not apply to the (h)(4) covenant since (h)(4) only applies to parcels where there has been no release or disposal of hazardous substances, therefore unlike the situation where a contaminated parcel is transferred to a PRP, the transferee could not be a PRP

ARMY RESPONSE: The Army does not agree that the deed language stating that CERCLA 120(h)(4) covenant shall not apply to a potentially responsible party (PRP exclusion language) should be deleted. The Army is providing the CERCLA 120(h)(4) covenant that no hazardous substances or petroleum products have been released on the Property. However, the deed provision also states that the Army will be responsible if contamination existing on the Property prior to the date of transfer is discovered in the future. This deed language recognizes that the possibility that contamination may exist on the Property notwithstanding the current information showing there have been no releases on the Property. Under these circumstances, it is appropriate to keep the PRP exclusion language to address the possibility of pre-existing contamination being discovered on the Property in the future.

PRIOR EPA COMMENT: Section 3B. This provision shifts the burden of establishing that a release is the responsibility of the Army to the Transferee. Such a provision is inconsistent with the statutory mandate for the Army to conduct any further response or corrective action found to be necessary after the date of transfer and may also be inconsistent with the Army's obligation to indemnify the transferee or subsequent parties suffering injury as the result of hazardous substances or petroleum products associated with the Army's use of the property.

(PRIOR) ARMY RESPONSE: Disagree. This is standard deed language that has been approved by the Army Office of General Counsel for property transfers at other BRAC installations. The Army believes the language as presented is consistent with the requirements relative to future identified spills or future spills on the subject property for the Army obligations as the Grantor and transferor of property to a Grantee and does not reduce the Grantor's indemnification requirements per applicable laws.

EPA REPLY: (Enclosure 4, Section 3B) The current language focuses on newly discovered contamination rather than subsequent release. If the Army is willing to substitute the following text, EPA's concern will have been addressed. Otherwise this must be identified as an unresolved comment.

B. If an actual or threatened release of a hazardous substance or petroleum product occurs or is suspected on the Property after the date of the conveyance, Grantee or its successors or assigns shall be responsible for such release unless Grantee is able to demonstrate that such release was due to Grantor's activities, ownership, use, or occupation of the Property.

ARMY RESPONSE: The deed language in question was developed to make the Grantee responsible for future releases that are discovered on the property unless the Grantee can demonstrate that the release was due to the Army's activities. This language was specifically drafted to apply to the discovery of releases on the property to protect the Army against future claims for post-transfer releases. The EPA's proposed language would potentially shift the burden of proof by raising the possibility that a Grantee could claim that a release didn't "occur or is suspected on the Property after the date of the conveyance".

PRIOR EPA COMMENT: Section 4D. This section should be modified to provide that the standards to be met prior to residential use are the standards established under Title X, even though the property in question is not "target housing" to which those standards are directly applicable.

(PRIOR) ARMY RESPONSE: Disagree. It is the Army position that the Title X requirements only apply to "target housing". There is no basis for the Army to impose the Title X requirement on non-residential property. However, if the property is used for residential habitation the deed provisions require the grantee to meet the Title X requirements.

EPA REPLY: (Enclosure 4, Section 4D) While EPA agrees that the Title X standards only apply to target housing, the comment was directed to the conditions for residential reuse and the need to make it clear that the standards established under Title X are to be met even though not directly applicable:

D. The Grantee covenants and agrees that it shall not permit the occupancy or use of any buildings or structures on the Property as Residential Real Property without complying with this section and all applicable federal, state, and local laws and regulations pertaining to lead-based paint and/or lead-based paint hazards. Prior to permitting the occupancy of the Property where its use subsequent to sale is intended for residential habitation, the Grantee specifically agrees to perform, at its sole expense, **the Army's abatement requirements under Title X** of the Housing and Community Development Act of 1992 (Residential Lead-Based Paint Hazards Reduction Act of 1992)(hereinafter Title X).

Since this is not target housing the Army does not have abatement requirements/obligations under Title X.

The Grantee shall, after consideration of the guidelines and regulations established pursuant to Title X: (1) Comply with the joint HUD and EPA disclosure Rule (24 CFR 35, Subpart H, 40 CFR 745, Subpart F), **when applicable**, by disclosing to prospective purchasers the known presence of lead-based paint and/or lead-based paint hazards as determined by previous risk assessments; (2) Abate lead-based paint hazards in pre-1978 buildings and structures in paint, dust and bare soil in accordance with the HUD Guidelines, with the addition of abatement of bare soil with lead levels higher than 2000 ppm; and (3) Comply with the EPA lead-based paint work standards when conducting lead-based paint activities (40 CFR 745, Subpart L)

As previously noted these regulations are not by their terms applicable; however, prior to residential reuse the grantor should comply with the standards established under federal and state regulations as if this were "target housing".

ARMY RESPONSE: The EPA notes that the regulations listed in the Army LBP deed provision "are not by their terms applicable; however, prior to residential reuse the grantor should comply with the standards established under federal and state regulations as if this were target housing". However, the DoD/EPA LBP Field Guide for Residential Property recognizes that responsibility for abatement may be assumed by the transferee through the transfer agreement. The LBP deed provision is consistent with this guidance by transferring the Army's Title X abatement requirements to the grantee if the property is used for residential habitation in the future.

**ARMY RESPONSE TO CALIFORNIA DEPARTMENT OF TOXIC
SUBSTANCES CONTROL (DTSC) HERLONG PARCEL COMMENTS
DATED JANUARY 10, 2003**

GENERAL COMMENT: One general concern regarding this document is the lack of specificity and detail regarding exactly who will be receiving what property. The current map (Enclosure 1), is inadequate, and prevents a meaningful evaluation of whether portions of the parcel are suitable to transfer or not. There are also inconsistencies between the site map, Table 1. – Description of Property, and narrative descriptions in both the Finding and the Environmental Protection Deed Provisions.

For example, the site map indicates that the Susanville Indian Rancheria has requested property that are known housing units. However, Table 1, the Description of Property, does not list these units, and there is no mention of them in any portion of the Finding itself, or the Environmental Protection Deed Provisions. This issue requires resolution prior to the FOST being distributed for public comment.

ARMY RESPONSE: The parties that are to receive this property are listed in paragraph #1 (Purpose) of this FOST. A larger scale map will be included in this FOST. All property described in this FOST is suitable for transfer. Housing units within the Herlong parcel were transferred to the Susanville Indian Rancheria in a previous Fed to Fed transfer to the U.S. Department of Interior.

COMMENT 1: Enclosure 1, Site map: DTSC previously commented on the need for a larger scale map. The current map, while an improvement over the previous version, is still inadequate. DTSC requires a full-scale map (approximately 34 inches x 44 inches, as provided in the Revised Final Environmental Baseline Survey CERFA Report, Plate 7), that clearly identifies all buildings, structures and other properties that Sierra Army Depot intends to transfer. This map is essential for DTSC to complete its evaluation of areas the Army believes are “uncontaminated”. DTSC needs to make a determination to concur with the Army’s identification of additional areas as uncontaminated pursuant to CERCLA Section 120 (h). This map should be provided to DTSC as soon as possible, prior to the initiation of the public comment period for this document.

ARMY RESPONSE: The FOST and its Enclosures accurately describes all buildings, structures and other properties the Army consider suitable and intends to transfer. The public comment period was conducted concurrently, for thirty days in October 2002 – No comments were received..

COMMENT 2: Enclosure 2, Table 1 – Description of Property: The Building 1003 C-Mart Oil/Water Separator is incorrectly categorized as Condition 1. The proper classification for this specific property is Category 4 – “Areas where release, disposal, and/or migration of hazardous substances has occurred, and all removal or remedial actions to protect human health and the environment have been taken.” All remedial actions at this site, as required by the Sierra Army Depot Nine Sites ROD/RAP (October 1996), have been completed to the State of California regulatory agencies satisfaction. At a minimum, a Category 2 classification could be used as an alternative. Accordingly, Section 8 of the FOST (Findings) should reference transfer pursuant to CERCLA Section 120 (h)(3). Section 120(h)(4) should only be used when it is determined, and the State concurs, that there have been no releases of the hazardous substances or petroleum.

ARMY RESPONSE: Disagree. Section 3.3.3 clearly states that although the release came from Building 1003, the release was not on the property being transferred, therefore, it should be Category 1, not Category 4.

COMMENT 3: Enclosure 4, Section 4 – Lead Based Paint (LBP) Notice and Covenant: DTSC prefers that the language in the LBP Notice for the Ft. Ord FOSET for Housing Area & Former Garrison Parcel (attached) be used. However, DTSC would be satisfied if the following revisions were made to the existing language: 1. Include in the definition of “residential”, structures that may be occupied by children such as daycare centers. 2. Remove the specific reference to the HUD abatement level of 2,000 ppm for soils. Referring to this concentration may mislead readers, since State cleanup levels are much lower. Instead, please state the appropriate federal statutory reference that the grantee must comply with, without a specific reference to soil concentrations.

ARMY RESPONSE: The Army has revised the LBP deed provision to include the following language:

For the purpose of this Deed, child-occupied facilities are included in the definition of "residential Real Property" and means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, less than 6 years of age, on at least two different days within any week (Sunday through Saturday), provided that each day's visit lasts at least 3 hours, that the combined weekly visits last at least 6 hours, and that the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day-care centers, pre-schools, and kindergarten classrooms."

The Army has also revised the LBP deed provision to delete the reference to the 2,000 ppm for soils abatement level.

COMMENT 4: Enclosure 5, Regulatory/Public Comments: Please remove the transcription of the hand written memo sent to Mr. Bob Weis. It is not pertinent to this document.

ARMY RESPONSE: Removed this memo.

COMMENT 5: Enclosure 6, Army Response to Regulatory/Public Comments: As commented above, please remove transcription and response to the hand written memo to Mr. Bob Weis.

ARMY RESPONSE: Removed this memo and response.

COMMENT 6: Enclosure 6, Army Response to Regulatory/Public Comments: Comment on Section 3.6, pg 4. The Army has misinterpreted DTSCs comment. The original comment requested that language from a previous Fort Ord FOSL be used. This language clearly specifies to parties receiving properties, that, "...residential or child occupied use of the building is prohibited unless all Lead Based Paint hazards have been abated."

ARMY RESPONSE: The Army has revised the LBP deed provision to include child-occupied facilities in the definition of "residential Real Property". See Army Response to DTSC Comment #3.

COMMENT 7: Enclosure 6, Army Response to Regulatory/Public Comments: Comment on Section 6, pg 5. The requirements for public participation pertaining to the FOST were transmitted by Ms. Diane Fowler, DTSC Public Participation Specialist, to SIAD's commanding officer on November 18, 2002, and to Mr. Mike Erickson on December 2, 2002.

ARMY RESPONSE: These requirements were received. These public participation requirements do not apply to FOSTs, as these are Army documents. During the week of 14 Oct 2002, the Army published notices in the local newspapers and provided a 30-day period for public review and comments IAW the Army FOST process. No public comments were received.